

Charters

Comptroller's Licensing Manual

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Introduction

The policies and procedures in this booklet apply to requests for new national bank charters, including special purpose banks (such as, trust banks, credit card banks, bankers' banks, community development, or cash management activities).

The booklet contains a step-by-step procedures section for the applicant and the Comptroller of the Currency (OCC) to follow in the process along with a glossary of the terms used in the booklet. The reference section includes cites to relevant OCC decisions and interpretive letters, as well as other source documents. Throughout the booklet there are hyperlinks to other related booklets and to sample documents, such as the Interagency Charter and Federal Deposit Insurance Application.

The OCC evaluates a proposed national bank's organizing group and its operating or business plan (business plan). The OCC's judgment of one may affect the evaluation of the other. An organizing group and its business plan must be stronger in markets where economic conditions are marginal or competition is intense. The OCC approves proposals to establish national banks that have a reasonable chance of success, will foster healthy competition, and will be operated in a safe and sound manner.

Novel questions and issues often arise in the application process. If unprecedented or unusual banking services or corporate arrangements are proposed, the OCC may require additional information and may conduct a more intensive review of the proposal.

Application Process

Organizing Group's Role

The organizing group must be comprised of five or more persons. Normally, many, if not all, of the organizers serve as the bank's initial board of directors. The president of the proposed bank, who is usually the CEO, must be a board member. All directors must comply with the requirements in 12 USC 72, unless a waiver request is submitted to and approved by the OCC (see the ["Director Waivers"](#) booklet).

The organizers are responsible for:

- Ensuring that the group consists of persons with diverse business and financial interests and community involvement.
- Having a personal history that reflects responsibility, honesty, and integrity.

- Exhibiting substantial personal and financial commitment to the proposed bank relative to their collective (and individual) financial strength.
- Selecting the CEO and other executive officers early in the application process who have the necessary experience to enhance the proposed bank's likelihood of success.
- Developing a business plan that demonstrates the group's collective ability to establish and operate a successful bank in the economic and competitive conditions of the market to be served.
- Being familiar with the business plan and their part in its successful implementation.
- Designing organizer compensation proposals that are consistent with OCC guidelines.

Although personal wealth is not a prerequisite for a national bank director, a director should not depend on bank dividends, fees, or other compensation to satisfy financial obligations. Because directors are often the primary source of additional capital for a bank not affiliated with a BHC, an organizer who also is proposed as a director should be able to supply capital, or have a realistic plan to enable the bank to obtain it, if needed.

Identification of CEO

Selection of a qualified CEO is one of the organizing group's most important decisions affecting the success of the new bank. The organizing group and its CEO must have the experience, competence, willingness, and ability to actively direct the proposed bank's affairs in a safe, sound, and legal manner. The organizing group may find the "Management Review Guidelines" in the [Appendixes](#) of the "Background Investigations" booklet useful for conducting its investigation of the proposed CEO's background and qualifications.

The OCC considers the CEO as essential for a new bank's success. The proposed CEO should:

- Be involved actively in developing the proposed bank's business plan. The CEO must implement the proposed plan successfully once the bank opens.
- Be a well-rounded person with strong leadership skills, who has managed a bank or similar financial institution successfully or has successful experience as an officer in areas relevant to the proposed bank's marketing strategy and needs.

- Possess skills that complement those of the directors and other proposed members of the executive officer team, including extensive experience in operations or administration.

The OCC can better evaluate proposed management in its review of the business plan, when the name of the proposed CEO is disclosed in the application. The proposal of a strong CEO, organizing group, and board of directors enhances the chances of preliminary approval. Selection of a CEO the OCC finds unqualified for the position, whose prior banking experience is unsatisfactory, or who otherwise is unacceptable could reflect negatively on the organizers and result in disapproval or revocation of preliminary approval, particularly when the CEO's identity was not disclosed in the application.

Decisions about a proposed CEO are based on a person's suitability for that position with a specific new bank and are not intended to determine eligibility for other jobs. The OCC will not grant approvals subject to the condition that a more suitable CEO be proposed.

Sponsor's Role

For an application sponsored by a BHC or other holding company, persons affiliated with other depository institutions, or those collectively experienced in banking, the OCC will evaluate the financial and managerial resources of the sponsor rather than those of the organizing group. The OCC will review, for consistency and compatibility with the proposed bank's business plan, a sponsor's record of performance, overall philosophy, and plans (for example, strategy, capital, management, and profitability). The OCC may deny or approve conditionally a sponsored new bank application, if the condition of the parent company and/or any affiliates are subject to supervisory concern. Conversely, when the sponsor serves as a substantial source of strength, the OCC may approve an application, even in a market in which economic conditions are weak and/or competitive conditions are intense.

A BHC, or a company that would become a BHC, because of its ownership of a proposed bank, must obtain the Federal Reserve Board's (FRB) approval to acquire a newly established bank before the OCC will grant final approval. Sometimes a company, not qualifying as a BHC under federal law, still could be considered a BHC under state law. Certain holding company activities permitted by federal law may be prohibited by state law. Consequently, each sponsor of a proposed bank must demonstrate that its application meets all standards imposed by both federal and state law.

Prefiling Discussions

The OCC expects all organizers to be familiar with this booklet and with the procedures for chartering a new national bank. As soon as the organizers are prepared to proceed, a representative should contact the Licensing staff in the

appropriate district office to schedule a prefiling meeting. The OCC expects all organizers of the proposed national bank to attend the prefiling meeting. When requested, OCC staff will consider conducting the prefiling meeting at a location proposed by the filer rather than at the OCC.

At the prefiling meeting, or in informal discussions, the Licensing staff reviews with the organizing group the OCC's chartering policy and procedures and the requirements for filing a charter application and organizing a national bank. Federal Deposit Insurance Corporation (FDIC) staff also may participate in the prefiling meeting to discuss pertinent procedures and requirements for obtaining deposit insurance. (Also, see the FDIC's deposit insurance policy statement, available from its Communications Office, Public Information Center, 801 17th Street NW, Washington, DC 20434, or from its [Internet site](#).)

Standard Submission and Review

Most organizing groups and many sponsors must file their charter applications using the OCC's standard submission guidelines. The OCC seeks to make a decision within 120 days after receipt or as soon as possible afterward. All charter applications are subject to a 30-day comment period. A well-researched and thoughtfully prepared application helps the OCC to make a timely decision. Refer to the [Interagency Charter and Federal Deposit Insurance Application](#) for the specific requirements.

Expedited Review

An application to establish a national bank that is sponsored by a BHC whose lead depository institution is an eligible depository institution (see Glossary) is deemed to be preliminarily approved on the 15th day after the close of the public comment period, or the 45th day after receipt, whichever is later, unless the OCC notifies the applicant prior to that date that:

- The filing is not eligible for expedited review or the expedited review process is extended under 12 CFR 5.13(a)(2).
- The proposed bank will offer banking services that are materially different than those offered by the lead depository institution.

Streamlined Submission

The OCC may permit a streamlined submission of a charter application, if the sponsor meets certain requirements. Normally, an application that qualifies for expedited review is filed using a streamlined submission. The sponsor or organizing group must submit its request to make a streamlined submission to, and receive approval from, the licensing manager in the appropriate district office prior to filing the charter application. In reaching a decision to

allow a streamlined submission for applications that do not qualify for expedited review, the OCC requires one of the following two criteria to be met:

- The sponsor should be an “existing bank holding company” that does not have any depository institutions subject to special supervisory concerns.
- The organizing group should be experienced in banking.

Even if the previous criteria have been met, the OCC may not allow a streamlined submission if:

- The chief executive officer (CEO) has not worked previously with the organizing group.
- The organizing group lacks experience operating in a particular type of market.

If the request to file a streamlined submission is approved, the sponsor or group may submit an abbreviated charter application to the OCC. The OCC may require additional information at any time to reach an informed judgment about the application. If the request for a streamlined submission is denied, the OCC will require the application to be completed according to its standard submission guidelines.

Decision Criteria

In reaching its decision, the OCC considers whether the proposed bank:

- Has organizers who are familiar with national banking laws and regulations.
- Has competent management, including the board of directors, with ability and experience relevant to the type of services to be provided.
- Has capitalization that is sufficient to support the projected volume and type of business.
- Can reasonably be expected to achieve and maintain profitability.
- Will be operated in a safe and sound manner.

The OCC also may consider the risk to the Federal Deposit Insurance Fund and whether the proposed bank’s corporate powers are consistent with the intent of the Federal Deposit Insurance Act.

The OCC also considers a proposed bank's plans for meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operations of the bank.

Standard Requirements and Special Conditions

When the OCC grants preliminary approval to a charter proposal, it imposes standard requirements on the proposal. The organizing group must meet most of the standard requirements before opening (see Standard Requirements in Appendix A).

In addition, the OCC may impose special conditions in the preliminary or final approval of a charter. Special conditions take two forms. The first one must be satisfied by the organizing group before opening (for example, raising a minimum level of capital net of organization costs). The second, which is considered a "condition imposed in writing" within the meaning of 12 USC 1818, remains in place after the bank opens (for example, maintenance of a capital floor or providing notice and obtaining the OCC's nonobjection of a significant change in the business plan) and continues until the OCC removes it.

Filing the Application

After the prefiling meeting, the group files an [application](#), including a [business plan](#) and appropriate [biographical and financial reports](#) on all identified insiders (see Glossary for definition). The organizing group must designate a contact person or spokesperson (hereafter, spokesperson), who serves as the primary liaison between the OCC and the organizers. The group also is strongly encouraged to submit information on the proposed CEO (see Specific Requirements, [Identification of the CEO](#)). In many cases, the CEO serves as the group's spokesperson.

The OCC begins to process each application immediately upon receipt. As appropriate, the OCC reviews and analyzes the proposal, completes background and field investigations, and resolves any unusual or novel issues (see Procedures: Filing the Application).

Publication Requirements

Each applicant must publish a notice of application in a newspaper of general circulation in the community in which the proposed bank will be located as close to the date of filing as practicable. If the application is an interstate filing, the OCC may extend the 30-day public comment period to allow sufficient time for all interested parties to comment (see the "[Public Involvement](#)" booklet).

Deposit Insurance and Filing with the FDIC

The OCC normally requires FDIC insurance for all national bank charters, except for uninsured trust bank proposals. The OCC and the FDIC encourage simultaneous submission of the charter and deposit insurance applications, respectively, to expedite processing.

To the extent possible, the OCC and the FDIC coordinate their investigations to minimize the burden to the applicant and to eliminate duplicative regulatory effort (for example, the FDIC may rely upon OCC background investigations and may conduct its investigation concurrently with OCC staff). The FDIC may take final action on its deposit insurance application before other regulators decide their applications.

Background Investigations

The OCC normally requires each proposed insider to submit [biographical and financial reports](#). The OCC conducts background checks to assess a person's competence, experience, integrity, and/or financial ability. The OCC will determine independently the accuracy and completeness of information submitted for each person and must not object to each serving in the proposed capacity.

Business Plan

The organizing group prepares the [business plan](#), which is critical to the OCC's decision of whether to grant the group approval to organize a national bank. The plan must reflect sound banking principles and demonstrate realistic assessments of risk in light of economic and competitive conditions in the market to be served. The plan should contain sufficient information to demonstrate that the proposed bank has a reasonable likelihood of success. Assumptions and projections should be realistic and consistent with all other information presented in the application. In addition, it should address adequately statutory and regulatory changes that may affect the proposed bank's operations.

Community Service

The business plan should indicate the organizing group's knowledge of and plans for serving the proposed bank's assessment area(s). The organizing group must evaluate the banking needs of the community, including its consumer, business, nonprofit, and government sectors. The business plan should demonstrate how the proposed bank would respond to those needs consistent with the safe and sound operation of the bank.

The CRA does not apply to certain special purpose banks, such as bankers' banks and banks that engage in only one or more of the following activities: providing cash management controlled disbursement services or serving as

correspondent banks, trust companies, or clearing agents (see 12 CFR 25.11(c)(3)). In those cases, the community service discussion may be omitted from the business plan.

Some other banks may seek designation as a wholesale or limited purpose bank (see 12 CFR 25.12(o) and (w), and 12 CFR 25.25(b)). A limited purpose bank offers only a narrow product line, such as credit card or motor vehicle loans, to a regional or broader market. To obtain that designation, a request should be submitted with the charter application, and a targeted community service discussion should be included in the business plan.

Additional Information

The OCC will request clarifications or limited additional information through the spokesperson. Those requests do not reflect negatively on the organizing group. Conversely, the OCC may deny or conditionally approve the proposal, if the additional information provided is insufficient to determine the bank's prospects for success or a poor business plan is presented.

Field Investigation

The OCC conducts a field investigation for every charter sponsored by an independent group. The OCC normally does not conduct a field investigation for a charter application accorded expedited review. Otherwise, the OCC will determine on a case-by-case basis whether to conduct a field investigation.

The OCC tailors the scope of each investigation, during which a national bank examiner may review relevant materials, interview insiders and other identified persons, explore matters related to the proposed bank's operations (including Internet operations), and meet with the organizing group to discuss findings. The findings from that investigation will influence the OCC's overall analysis and review of the application. Whenever possible, the OCC will coordinate its investigation with that of the FDIC.

Amendments

Organizers may file amendments to the application during the review process. However, the OCC may conclude that the submission of numerous and/or significant amendments during the review period have rendered the original application obsolete, which reflects negatively on the group. In such cases, the OCC may deem the original application to be withdrawn or deny it. The organizers must then file a new application and filing fee to be considered by the OCC as a "new" proposal.

Decision and Post-Decision Events

Following review of the application, the OCC will decide whether to grant preliminary approval or deny the request to charter a national bank. If the OCC grants preliminary approval, it will notify the spokesperson and other interested parties in writing. The organizing group then may begin to organize the bank according to the plan set forth in the application. A preliminary approval decision is not an assurance that final approval will be granted. Refer to the [“Corporate Organization”](#) booklet for guidance on how to organize the proposed bank.

If preliminary approval is withdrawn or the application is denied, the OCC will convey the reasons in writing, and the organizers personally must pay all expenses incurred in connection with the proposal.

Preliminary and Final Approval

The OCC imposes the following standard condition on each preliminary and final approval:

- The bank (i) shall give the appropriate OCC supervisory office at least sixty (60) days prior written notice of the bank’s intent to significantly deviate or change from its business plan or operations, and (ii) shall obtain the OCC’s written determination of no objection before the bank engages in any significant deviation or change from its business plan or operations. For the first three years of operation, the bank also must provide a copy of such notice to the FDIC’s appropriate regional supervisory office.

During the organization phase, the bank must notify the supervisory office promptly and obtain the OCC’s written determination of no objection (see Appendix A: Standard Requirements).

This condition of approval is a condition “imposed in writing by the agency in connection with the granting of any application or other request” within the meaning of 12 USC 1818. As such, this condition is enforceable under 12 USC 1818.

Specific Requirements

Depository Institutions Management Interlocks Act

The Depository Institutions Management Interlocks Act prohibits certain management interlocks between nonaffiliated depository organizations. The OCC may permit an interlocking relationship, if one of the organizations is a newly chartered bank and the relationship is deemed necessary to provide management or operating expertise to the organization (see the [“Management Interlocks”](#) booklet).

Organization Costs

Normally, the OCC will allow expenses incurred by the organizing group in making application for and organizing a bank to be charged to the bank's capital. An organizing group funds the operations of a national bank through a loan or personal loans from individual organizers.

The cost of start-up activities, including all organizational costs, should be expensed as incurred. Detailed instructions for the definition of start-up activities and the inclusion of these costs in the bank's Report of Income are included in the Glossary instruction "Start-up Activities" to the Consolidated Reports of Condition and Income (Call Report). This guidance is consistent with AICPA Statement of Position 98-5, "Reporting on the Costs of Start-up Activities."¹

The cost of purchasing and leasing bank premises should be capitalized in the cost of the asset. This would include interest costs incurred during the period the asset is under construction.

All fees and organization costs must be disclosed fully to prospective shareholders in the offering document. Sufficient information must be made available to assist in an evaluation of the reasonableness of such expenses. (See the "[Corporate Organization](#)" booklet for additional information.)

Contracts

Any insider contract (see Glossary) must be made on nonpreferential terms and submitted to the OCC for review. In addition, if the proposed contract involves an insider, the OCC requires at least one independent appraisal of the contract, which includes:

- Its description (for example, assets, property, service).
- Its terms.
- Evidence showing that the contract is fair, reasonable, and comparable to similar arrangements that could have been made with unrelated parties.

Each insider contract also must be disclosed to proposed or actual shareholders. Copies must be maintained in the bank's files and made available to shareholders upon request.

Typical agreements and/or contracts include:

¹ See OCC Bulletin 98-29, accounting for computer software costs.

- The sale or other transfer of any organizer stock in the proposed national bank, including a voting trust or other voting agreement.
- An organizer acting as representative of or on behalf of any person associated with the proposed national bank or the proposed bank itself.
- The payment or receipt of any money or thing of value as compensation for services rendered or property transferred in organizing the proposed national bank (for example, purchase or lease of banking premises, furniture, equipment, fixtures, supplies, consultant or legal fees, preparation of registration statement or nonpublic offering, solicitation of stock).

Regardless of insider involvement, every contract, including real estate or employment commitments, should include provisions addressing obligations of, and options available to, the parties should the OCC experience delays in processing the application; deny the application; revoke its approval later, or object to a person serving in any proposed capacity.

A proposed national bank may not pay any fee contingent upon an OCC decision. Such action is grounds for denial of the application or withdrawal of preliminary conditional approval.

Capital Adequacy

An organizing group must raise a sufficient amount of capital to pay all organization costs, compete effectively in the market area, and support planned operations adequately. The OCC may determine that higher or lower amounts of capital from those proposed originally are based on local market conditions or the business plan presented by the organizing group. The OCC expects projected capital for new banks to remain at or above the "well capitalized" level as defined in 12 CFR 6.4(b)(1) for the first three years of operations.

An organizing group may raise capital prior to the OCC's decision on the application based on certain criteria. Any group interested in raising capital prior to OCC's decision should contact the licensing manager in the appropriate district office for the specific criteria.

An uninsured national bank, such as a trust bank, is not subject to the requirements of 12 CFR 6. However, the organizing group should present thorough arguments to support its proposed capital. In some cases, the OCC may require an uninsured national bank, as a condition of approval, to maintain a specified minimum level of capital.

The OCC generally is opposed to debt-based capitalization of a new bank. If any debt will be issued by a sponsor or affiliate to capitalize the bank, the

organizing group must demonstrate that debt service requirements can be met without reliance on cash flows of *any kind* from the bank.

The OCC has no general prohibition against the inclusion of preferred stock in the initial capital structure of a new national bank. However, the OCC may determine that the inclusion of a significant amount of preferred stock in a bank's capital structure could lead to instability in the ownership of the bank or otherwise adversely affect the safety and soundness of the institution. Such a determination would justify disapproval of the charter application or revocation of a preliminary approval already issued.

The organizing group should disclose any options, warrants, and/or other benefits associated with the proposed capital. Such disclosure should be made regardless of whether it is at the bank or holding company level. (See Appendix C for specific guidance.)

Investment in Bank Premises

There are statutory limits on investments in bank premises, provided in 12 USC 371d. Unless previously approved by the OCC, proceeds from the sale of stock must be held in escrow and may not be used to finance the construction/acquisition of bank premises. Construction of the bank facility must comply with the minimum security standards in 12 USC 1882 and 12 CFR 21 (see the "Investment in Bank Premises" booklet).

Filings with Other Regulators

When substantially similar state and national charter applications are filed by the same organizing group or persons representing the same interest, the OCC generally will consider the national bank application abandoned, unless the state bank application is not being processed.

Special Purpose Charters

A national bank is authorized by its charter to exercise all express or implied powers of national banks. An applicant that will limit its activities to fiduciary activities, credit card operations, or another special purpose (for example, a community development focus or cash management activities) must adhere to established charter procedures with appropriate modifications.

Special purpose bank charters do not qualify for expedited review because they offer a limited range of banking services. If requested, the OCC may authorize a modified streamlined submission for an existing BHC or a group experienced in banking.

Narrowly Focused Operations

The OCC receives numerous inquiries and proposals from individuals and groups expressing interest in establishing a national bank to conduct new business or transfer existing operations into a new bank. Proposals increasingly incorporate nontraditional elements and narrowly focused business plans serving targeted markets. Proposals to organize this type of narrowly focused bank pose special concerns to the OCC, because these banks may be exposed to elevated levels of credit, liquidity, transaction, reputation, and strategic risk from inadequately diversified asset and liability portfolios, unanticipated funding needs, capital limitations, and on-line security issues.

Proposals that possess unique risks are those that call for narrowly focused banking services or those that anticipate serving a narrowly defined market niche; for example, a lending portfolio that is heavily concentrated or targets a restricted customer base. The risks that are exacerbated in narrowly focused banks include concentrations, funding/liquidity, capital, customer authentication, and strategic planning. Those unique risks require well-defined business strategies (including contingency plans, sound funding sources, and projected capital commensurate with the risks) and specialized management.

Because of the unusual supervisory risks associated with narrowly focused banks, the OCC will review the business plan to ensure that it adequately addresses the following risks:

- **Concentrations.** Diversified asset and liability portfolios, product selection, funding sources, and target markets help make a bank less vulnerable to a downturn in any one market that could significantly affect its income or liquidity. Narrowly focused banks, by their very nature, are not as diversified as traditional banks, and a bank's business plan should address how any concentration risk will be mitigated. The plan also should detail the source of required expertise to engage in a certain industry or lending type.
- **Funding and liquidity.** Some organizers have underestimated the marketing and operating expenses involved with an Internet delivery channel as they establish their product strategies. The organizers should clarify in the business plan how the bank's sources of funding are reasonably diverse, how it intends to maintain adequate liquidity, and how credit-sensitive funding risks will be managed.
- **Capital.** The business plan should identify sufficient capital to address uncertainties and provide a clear ability to raise capital, if needed. Except in rare circumstances, initial capitalization at a minimum must be sufficient to support the proposed bank until it achieves profitable operations, while maintaining adequate capital levels. Depending on the

risk profile of a narrow-focused bank's business plan, higher capital levels may be required. This level of initial capital is particularly important if the bank relies on an Internet-only platform for distribution of products and services.

- Customer authentication/security. The business plan of a bank using the Internet as a significant means of product delivery must address authentication and security issues. The bank's method of customer authentication and fraud detection is critical because of the lack of physical contact with bank customers. Internet banking platforms allow bank customers to access information and systems directly, including those that enable funds transfers between banks (ACH). Also, pursuant to the Bank Secrecy Act, banks must report and record customer transactions that exceed certain thresholds. In an Internet environment, a bank may need to modify its systems for monitoring customer transactions.
- Strategic planning. Narrowly focused banks often target a limited customer base and frequently have ill-defined contingency plans for redirecting efforts should the business plan not be successful. Organizers should define clearly in the business plan their targeted audience (for example, by product and geographies) and the strategic alternatives.

The OCC may require an independent third-party feasibility analysis or study be obtained to evaluate the likelihood of the success of the proposed business plan. This independent evaluation should address the bank's growth potential, competitor level, organizational and operational costs, financial implications, and the viability of the proposed bank's business plan.

Expansion or Contraction of Activities

If a limited charter bank wants to expand its powers to those of a full service commercial bank, it must amend its Articles of Association and submit a request to the Licensing staff in the appropriate district office that includes a proposed business plan, filing fee, and list of management. Although a complete application is not required, the OCC may request that the bank file certain parts of the charter application to evaluate sufficiently the proposed change to full service banking.

If a full service national bank wants to convert to a limited service charter, such as a cash management or trust bank, it must amend its Articles of Association and submit a notice to the Licensing staff in the appropriate district office. The notice includes a proposed business plan, changes in the bank's capital structure, a description of planned changes in bank premises, and a list of proposed management. Although no fee is charged for this type of transaction, any resulting reduction in capital requires the filing of a Letter of Intent and appropriate fee (see the "[Capital and Dividends](#)" booklet). Similarly, if the bank intends to relocate its head office or to relocate or close any branch in its conversion to a limited service charter, the appropriate

relocation application and filing fee or branch closing notice must be submitted (see the “[Branches and Relocations](#)” booklet). Although no public notice is required to convert to a limited service charter, it may be needed for related applications or notices, such as a purchase and assumption, relocation, or branch closing.

Trust Banks

The OCC may grant approval for a national bank to exercise fiduciary powers pursuant to its authority in 12 USC 92a and the licensing requirements in 12 CFR 5.20 and 5.26. An organizing group or sponsor may seek to charter a national bank that exclusively offers fiduciary services. Full or limited fiduciary powers may be requested (see the “[Fiduciary Activities](#)” booklet). National banks that limit their services solely to fiduciary services are referred to sometimes as national trust banks or national trust companies.

A national trust bank is exempt from the definition of a “bank” in the BHCA (12 USC 1841(c)), provided it meets certain conditions. The consequence of qualifying for this exemption is that any type of company, not only those whose activities are limited to activities permissible for a bank holding company, may own a trust bank. The conditions of the exemption are:

- All or substantially all of the trust bank deposits are in trust funds and are received in a *bona fide* fiduciary capacity.
- No trust bank deposits insured by the FDIC are offered or marketed by or through its affiliate.
- The bank does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties, or make commercial loans.
- The trust bank may not obtain payment or payment-related services from any FRB.
- The trust bank may not exercise FRB discount or borrowing privileges.

The OCC requires that such a trust bank’s Articles of Association limit the bank to the exercise of fiduciary powers and the support of incidental activities. A new trust bank typically has high fixed expenses, including personnel costs and vendor contracts. The OCC will review projected revenues to determine whether the sources of fee income are reasonable given the competitive environment. A business plan that includes growth through acquisition should discuss the effect of intangible assets on capital and liquidity.

Capital in a trust bank serves primarily to absorb operating rather than business losses. National trust banks are required by statute (see 12 USC 92a)

to have minimum capital equal to that required by state law for companies offering similar services in the state in which the bank will be located. At a minimum, initial capital should be sufficient to support the bank's operations and absorb all operating losses, until profitability is achieved, while maintaining capital at an appropriate level to support safe and sound operations. Most of a trust bank's assets are off-balance sheet. Risk-based capital guidelines apply to the balance sheet assets of a trust bank, but not to fiduciary assets that are off-balance sheet. Thus, the OCC may impose a minimum capital requirement for uninsured trust banks as a condition of its approval.

A trust bank's management team should include someone who has financial management experience sufficient to prepare financial and regulatory reports for the bank.

No action that would alter materially the parent company's or a successor owner's ownership interest in the bank may be taken without prior OCC approval. An exception occurs when a change in ownership is subject to the prior approval of another federal depository regulatory agency. If the OCC considers a change in ownership, it will apply the definitions and standards in the Change in Bank Control Act and the OCC's implementing regulation (12 USC 1817(j) and 12 CFR 5.50) to determine whether a change in the parent company's or a successor's ownership interest is material and whether to approve a proposed change.

Certain prospective trust bank sponsors (for example, securities or investment banking companies engaged in underwriting or dealing in securities) are not precluded by the BHCA from owning an uninsured national trust bank. However, they may encounter legal difficulty chartering a national trust bank, because of Glass Steagall Act requirements (see 12 USC 78 and 377). The OCC encourages those sponsors to initiate early discussions with OCC and FRB legal staff to discuss compliance.

The CRA does not apply to uninsured trust banks.

Credit Card Banks

National credit card banks take two basic forms. First, a BHC or an organizing group may own directly a bank that engages exclusively or predominantly in credit card activities. This bank may legally offer additional commercial banking services (for example, deposit accounts for its employees), unless prohibited by its Articles of Association. Even then, that bank may expand its activities after following the "Expansion or Contraction of Activities" requirements discussed later in this booklet.

The second form of a national credit card bank, the so-called "CEBA credit card bank," is owned by a nonbank holding company or a bank. This type of bank must qualify for the credit card bank exemption created by the

Competitive Equality Banking Act of 1987 (CEBA) amendment to the BHCA (12 USC 1841(c)(2)(F)). If a proposal meets all of the following requirements, the credit card bank is excluded from the "bank" definition in the BHCA, and its parent is not considered a BHC, subject to the activities limitations generally applicable to BHCs under the BHCA. The bank:

- Must engage only in credit card operations.
- Cannot accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties.
- May not accept any savings or time deposits of less than \$100,000, except if they are used as collateral for secured credit card loans.
- May maintain only one office that accepts deposits.
- May not engage in the business of making commercial loans.

Those limitations must appear in the bank's Articles of Association.

Many credit card bank proposals raise affiliate transactions issues under sections 23A and 23B of the Federal Reserve Act (12 USC 371c and 371c-1, respectively). The most common issues relate to:

- Initial capitalization of a newly chartered credit card bank.
- Transfers of assets between the credit card bank and its affiliates.
- The possibility that, for a proprietary credit card bank, credit extended to its cardholders may be treated as a loan to an affiliate, if credit cards are used by customers to purchase goods and services from bank affiliates.

Each applicant should evaluate thoroughly and discuss potential issues with appropriate OCC staff before filing. Because those issues are sometimes complex, an applicant also may wish to consult its regulatory counsel.

A credit card bank generally must maintain its status as an "insured depository institution" within the meaning of 12 USC 1813(c)(2) and apply for membership in the Federal Reserve System. In the event the FDIC initiates or takes any action to terminate the bank's status as an "insured depository institution," the bank must request and obtain the OCC's prior approval before continuing operation as a non-FDIC insured national bank. In determining whether the OCC should approve the bank's continued operation as an uninsured institution, the OCC reserves the right to impose additional conditions upon the bank.

A credit card bank also must comply with the CRA. However, it may seek designation as a limited purpose bank (see the Community Service discussion under “Filing the Application” heading in this booklet).

Community Development Bank

One option available for prospective bank organizers is to charter a national bank with a community development focus (CD bank). A CD bank targets financial services to the revitalization of communities through partnerships with public, nonprofit, and other private initiatives. Such banks must meet the same statutory, regulatory, and procedural requirements as other commercial national banks. There are two unique features of a CD bank. First, the OCC provides technical assistance through a team of licensing, legal, and community development staff to the organizers of these banks prior to the charter prefiling meeting. This assistance includes meeting with the organizers and reviewing draft documents. Secondly, other national banks may invest in the CD bank, if it satisfies applicable requirements of the OCC's regulations (12 CFR 24).

Organizers seek CD bank designation to gain broader access to capital from:

- An investment from one or more national banks not to exceed 5 percent of each bank's capital and surplus, subject to limitations in 12 USC 24(11) and 12 CFR 24.
- Investment from other depository institutions.
- Investments or gifts from certain charitable organizations.
- An award from the Community Development Financial Institution Fund.

A CD bank should be able to demonstrate community support or participation in one or more ways that include:

- Representation on the board of directors by nonbank community representatives with expertise relevant to the proposed bank.
- Establishment of an advisory board for the bank's community development activities that includes nonbank community representatives with expertise relevant to the proposed bank.
- Formation of a formal business relationship with a community-based organization in connection with the proposed bank.
- Contractual agreements with community partners to provide services for the proposed bank.

- Financing for the proposed bank from the public sector or community development organizations.

The CRA applies fully to CD banks.

When the OCC grants preliminary approval to a charter with a community development focus, other national banks may invest capital in it. However, any one bank proposing to invest in a CD bank must limit its investment to avoid being considered a bank holding company under the Bank Holding Company Act. In addition to having an ownership stake in this institution, banks may serve as advisors; lend senior and executive staff; contribute facilities, equipment, and expertise; and sit as directors, along with community leaders, on their governing boards. These investor banks may receive positive consideration under CRA for their investments.

The OCC's Licensing staff works closely with the OCC's Community Development Division (CDD) staff on each CD bank application. CDD staff normally participates in the field investigation and all other pre- and post-decision activities. Requests by established banks to make an investment in a CD bank are directed to and processed by CDD.

Cash Management Banks

A cash management national bank normally is affiliated through a BHC structure with other banks that engage in a full array of commercial activities. The BHC uses a cash management bank to provide certain financial services for its large corporate customers. In the cash management bank, all accounts are swept at the end of each day as each customer usually must clear its accounts daily to zero. Fees for services typically are charged to each customer based on the number of services used and the number of items processed.

Although banks may be chartered *de novo* as cash management banks, most are created by stripping down the operations of an existing bank to a cash management bank functions following a purchase and assumption transaction.

A key consideration when a bank alters its operation in this manner is the appropriate level of capital. In some cases, the BHC may wish to reallocate its capital and reduce capital in the cash management bank (see the "Capital and Dividends" booklet). If the cash management bank is affiliated with an existing BHC whose lead depository institution is an eligible bank, the OCC will allow capital to be maintained at the "well-capitalized" level as defined in 12 CFR 6.4(b)(1).

The CRA does not apply to this special purpose bank, which is engaged only in providing cash management, controlled disbursement services to the public.

Bankers' Bank

A group organizing a bankers' bank (see Glossary) may request the OCC to waive compliance with certain statutes or regulations. Requests for such waivers should accompany the application and must be supported by adequate justification and legal analysis. The OCC will review each waiver request by a national bankers' bank and decide whether it is justified. However, the OCC cannot waive statutory requirements that apply specifically to a bankers' bank.

National banks investing in a bankers' bank may own no more than 5 percent of any class of its voting securities. In addition, a national bank's total investment in the stock of one or more bankers' banks is limited to 10 percent of its unimpaired capital and surplus. Stock in a bankers' bank may be sold only to depository institutions or their holding companies. The CRA does not apply to bankers' banks.

Procedures: Prefiling

Organizers

1. Request information about the chartering process from the Licensing staff in the appropriate district office.

Licensing Staff

2. Forwards information about the chartering process to the organizers, including this booklet and “The Internet and the National Bank Charter” booklet.

Organizers

3. Review information about the chartering process.
4. Request that a prefiling meeting be scheduled.

Licensing Staff

5. Schedules prefiling meeting with proposed insiders, including the chief executive officer (CEO) (collectively, the organizing group), if possible.
6. Invites FDIC staff to participate in the prefiling meeting.
7. Discusses the following subjects, as appropriate, with the organizing group:
 - The OCC’s role and, as applicable, that of the FDIC and the Federal Reserve.
 - The key policies and specific requirements affecting the chartering process.
 - Whether the application qualifies for expedited versus standard review and streamlined versus standard submission.
 - How to file the charter application and follow the chartering procedures.
 - An overview of the organization phase.
 - Common problems associated with new banks, including:
 - Frequent management changes.

- Difficulties in hiring qualified personnel.
 - Management/board incompatibility.
 - Impatience for growth/profitability.
 - Abandonment of sound credit standards.
 - Lax policies and procedures.
 - Excessive reliance on brokered deposits and other volatile liabilities.
 - Insider transactions/abuses.
 - Excessive salary/occupancy/overhead expense.
 - Poor asset/liability management.
8. Solicits information about the organizers, both individually and collectively; the proposed bank and its business plan; and the market the proposed bank will serve.

Organizing Group

9. Provides information about:
- Individual and group qualifications.
 - An overview of the proposal with particular emphasis on any unique aspects.
10. If appropriate, requests filing of a streamlined submission and, if advised, provides written justification.
11. [For bankers' bank] If necessary, provides a written request and justification for waiver of certain legal requirements.

Licensing Staff

12. Answers questions posed by those attending the meeting.
13. Prepares a memo of the meeting and holds it in a pending file.
14. If necessary, takes steps for the appropriate official to make a decision on any request for a streamlined submission and/or waiver.

15. Sends an OCC response on any request for a streamlined submission and/or waiver to the organizing group and retains a copy, with the original request and any documentation, in a pending file.

Procedures: Filing the Application

Prefiling

Licensing Staff

1. Refers the organizing group to the “General Policies and Procedures” (GPP), “Charters,” “The Internet and the National Bank Charter, and other applicable booklets of the *Comptroller’s Licensing Manual* for guidance about the OCC’s policies and procedures to charter a national bank. Conducts a prefiling meeting using the Prefiling Meeting Procedures.
2. If any prefiling discussion or meetings reveal significant policy, legal, CRA compliance, or supervisory issues, contacts Headquarters Licensing (HQ LIC) to decide:
 - Whether the application should be filed with the Washington office, if broad issues are involved.
 - Whether specific issues should be carved out for Washington action, while the application continues to be processed in the appropriate district office.
 - When the filing should be forwarded to Washington.
3. Holds or decides to waive a prefiling meeting with the organizing group to review the requirements and procedures for organizing a new bank.

Filing the Application and Publication

Organizers

4. Submit a completed [application](#), including the Interagency [Biographical and Financial Reports](#), and filing fee to the licensing manager in the appropriate district office or to HQ LIC.
5. Publish a notice on the date of filing or as soon as practicable before or after the date of filing (see the “[Public Involvement](#)” booklet).

Review

Licensing Staff

6. Initiates and enters appropriate information into the Corporate Activities Information System (CAIS).
7. Establishes the official file to maintain all original documents and initiates background checks, as appropriate (see the "Background Investigations" booklet).
8. Forwards the filing fee and the deposit memorandum (Form 6043-01) to the Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150. Retains a copy of the memorandum. Contacts the applicant if the filing fee is not received or is inaccurate.
9. Reviews the application, relevant information about proposed affiliates and ownership, and biographical and financial information filed by organizers and other proposed insiders to determine if the filing contains all information necessary to reach a decision. If not, requests information from the contact person or spokesperson to be provided by a specific due date.
10. On an application submitted by a sponsor, determines if the sponsor's lead depository institution meets the necessary criteria and is eligible for expedited review of the charter application; and
 - If the lead depository institution is not an eligible bank, prepares and sends a letter to the contact person or spokesperson providing notice of standard review within five business days of receipt.
 - (If appropriate) If the lead depository institution is an eligible bank, acknowledges filing within five business days of receipt (see the Acknowledgment of Receipt.)
11. Within five business days of receipt, notifies the assistant deputy comptroller (ADC) in the supervisory office of receipt of the application and solicits comments from other OCC divisions, as appropriate, with preliminary responses required within 15 days of receipt; and
 - Notifies the appropriate supervisory office (that is, by E-mail which may include the Executive Summary Comments or Application Comments from CAIS). Provides, at a minimum, a brief summary of the application, business plan, and the main organizers.
 - Contacts HQ LIC if the proposal will affect significantly the quality of the human environment or affect any district, site, building or structure listed in, or eligible for listing in the *National Register of Historic Places* (see the "GPP" booklet).
 - For bankers' banks, routes request(s) for exemptions or waivers from statutes or regulations to the Law Department.

Field Investigation

12. (Not applicable for a streamlined application. If so, go to step 14.) Decides to conduct a field investigation, particularly if one or more of the following circumstances exist:
 - The application is sponsored by an independent group that is neither experienced in banking nor affiliated with an existing BHC.
 - There is insufficient information available to the district office about the organizing group, the chief executive officer, or the accuracy and quality of the research and analysis comprising the business plan.
 - It is necessary to verify the accuracy and quality of the information contained in the business plan or to meet with members of the organizing group, its contact person or spokesperson, the proposed chief executive officer (if identified at the time the application is filed), or interested members of the public.
13. Requests a field investigation from the appropriate supervisory office and determines its scope.

Licensing Staff

Public Comments and Hearings

14. If copies of the application are requested, follows the Procedures—Information Request in the “GPP” booklet.
15. If public comments are filed or hearings requested, refers to the “Public Involvement” booklet for guidance and hearing procedures.
16. Determines whether the comments are material.

Review and Decision

17. After the close of the public comment period, if the proposed charter application qualified as eligible for expedited review, determines whether the filing should be disqualified, and if:
 - No, continues processing.
 - Yes, contacts the contact person or spokesperson immediately and notifies him or her that the proposal is no longer qualified for expedited review and identifies the specific reason.

18. Determines whether the bank has plans to offer PC or Internet banking at opening date. If yes, consults with HQ LIC.
19. (Not applicable for expedited review) Receives and reviews the Field Investigation Report.
20. Prepares confidential memorandum and decision letter recommending a decision to the delegated official.
21. Decides application under delegated authority or forwards the official file to HQ LIC for decision. If referred to HQ LIC, go to step 26.
22. Notifies contact person or spokesperson and interested parties of decision, if appropriate.
23. Sends the contact person or spokesperson a decision letter.
24. Makes appropriate CAIS entries.
25. Completes applicable sections of the New Bank Handoff Checklist, forwarding copies of the following documents to the supervisory office: the confidential memorandum, preliminary approval/conditional approval letter (including attachments), updated CAIS comments, and additional material highlighting any supervisory or licensing concerns.

HQ LIC

26. Makes appropriate CAIS entries.
27. Reviews the file and all relevant information; solicits comments from other OCC divisions, as appropriate; makes a recommendation; and forwards the official file to the appropriate official for decision.
28. Notifies the contact person or spokesperson, interested parties, and the licensing manager of the decision.
29. Sends the contact person or spokesperson a decision letter.
30. If the application is conditionally approved or denied, forwards a copy of the confidential memorandum, decision document, and transmittal letter to the Director, Licensing Policy and Systems.
31. Makes appropriate CAIS entries.
32. Completes applicable sections of the New Bank Handoff Checklist, forwarding copies of the following documents, at a minimum, to the supervisory office: the confidential memorandum, preliminary approval/conditional approval letter (including attachments), updated

CAIS comments, and additional material highlighting any supervisory or licensing concerns.

33. If denied, goes to step 36.
34. For approved and conditionally approved filings, returns the official file to the licensing manager for additional processing.

Organizers

35. Proceed to organize the bank.

Close Out

HQ LIC

36. For denied applications only, reviews the file for completeness and forwards it to Central Records.
37. Makes appropriate CAIS entries.

Appendix A: Standard Requirements

[The OCC imposes the following standard requirements for most preliminary conditional approvals]

(Name of bank)(hereinafter, bank) must meet the following standard requirements:

- Organizers must notify the OCC promptly and obtain the OCC's written determination of no objection for any significant deviation or change in the business plan submitted with the application. During the organization phase, a significant deviation or change that has not received the OCC's written determination of no objection may be grounds for delaying issuance of the charter or withdrawing preliminary conditional approval.
- For a period of two years after the bank has opened for business, the bank must file and obtain the OCC's written determination of no objection prior to any new executive officer or director assuming such position.

Since this requirement is imposed under the OCC's chartering authority, the OCC is not subject to the 30-day review period imposed by 12 USC 1831i. However, the OCC will process all such notices in a timely manner using the procedures in the "Change in Directors and Senior Executive Officers" booklet.

- **[Existing BHC-sponsored applications only.]** If the capital for the bank is not raised within 12 months or if the bank is not opened within 18 months from the preliminary conditional approval date, this approval expires. The OCC is opposed to granting extensions, except under the most extenuating circumstances and when the OCC determines that the delay is beyond the applicant's control. The organizers are expected to proceed diligently, consistent with their application, for the bank to open business as soon as possible.
- The OCC requires that, prior to opening, the bank engage an independent, external auditor to perform an audit according to generally accepted auditing standards of sufficient scope to enable the auditor to render an opinion on the financial statements of the bank (or consolidated holding company), taken as a whole. The audit period shall commence on the date that the organizing group forms a body corporate and may end on any calendar quarter-end no later than 12 months after the bank opens. The OCC expects that such audits will be performed annually for at least three years following commencement of

operations. Engagement of an auditor will be verified during the preopening examination.

[An exemption usually is granted for a national bank sponsored by a bank holding company where the bank's financial statements are included in the audited consolidated financial statements of the parent and the bank maintains adequate audit coverage at the bank level.]

- **[If applicable]** Warrants issued to bank organizers must include the following provision:

If the bank's capital falls below the minimum requirements contained in 12 CFR 3 or below a higher requirement as determined by the OCC, the OCC may direct the bank to require warrant holders to exercise or forfeit their warrants. Bank will notify warrant holders within 45 days from the date the OCC notifies the bank in writing that warrant holders must exercise or forfeit their warrants. Bank will cancel warrants not exercised within 21 days of the bank's notification. Bank has agreed to comply with any OCC request that the bank invoke its right to require warrant holders to exercise or forfeit their warrants under the previous circumstances.

As a requirement of this approval, the bank agrees to invoke the "exercise or forfeit" feature at the OCC's request under the previous circumstances.

- The bank's financial statements must be prepared on an accrual basis according to generally accepted accounting principles.
- The president must serve as a member of the board of directors.
- Each person who, together with his or her related interests, subscribes to 10 percent or more of the initial stock offering must submit a biographical and financial report for review to the Licensing staff prior to acquisition of his or her shares. The Licensing staff must have no objection to each person before he or she purchases shares. After opening the bank, requirements of the Change in Bank Control Act (12 USC 1817(j)) will apply. Changes in the composition of members or trustees of a voting trust or voting agreement also may be subject to the requirements of the Change in Bank Control Act.
- Stock subscription funds collected during the organization of the bank and held for investment may be invested, directly or indirectly (for example, mutual funds) only in U.S. government securities (bills, bonds, or notes).
- Stock certificates must not be issued prior to the date the bank opens for business, but must be issued immediately following the bank's opening.

- The bank must have adequate fidelity insurance covering all persons authorized to collect, receive, or deposit funds from stock subscriptions. The bank must purchase adequate fidelity bond coverage in accordance with 12 CFR 7.2013, which lists four factors the directors should consider to determine adequacy. This insurance must be in force from the effective date of the offering circular until the bank opens for business.
- The board of directors must develop written policies and procedures that will guide the bank's operations in a safe and sound manner. Those policies must be completed no later than the date of the applicant's request for a preopening examination. In addition, the board of directors must review and adopt the policies and procedures at its first meeting (see Appendixes, Minimum Policies and Procedures). The board of directors is responsible for regular review and modification of policies and procedures and for assuring continuous compliance with them.
- Organizational and preopening expenses significantly exceeding those projected in the application, and/or net capital significantly less than that projected in the application, is a basis for revocation of preliminary conditional approval. Capital adequacy is not the sole reason to determine the acceptability of organization costs. The OCC will evaluate the reasonableness of preopening expenses.
- **[Standard submission]** A letter must be submitted to the district office at least 45 days before the bank is scheduled to open, notifying the OCC that all conditions and requirements necessary to receive a national bank charter have been met, requesting a preopening examination, and providing the anticipated opening date.

or

[Streamlined submission] A letter must be submitted to the district office at least 10 days before the bank is scheduled to open, notifying the OCC that all conditions and requirements necessary to receive a national bank charter have been met, forwarding certain documentation and providing the anticipated opening date.

- **[If applicable]** If some of the parent company's directors are directors of nonaffiliated depository institutions with assets in excess of \$2.5 billion, the Depository Institutions Management Interlocks Act (DIMIA) prohibits the interlocking directorates when the bank's assets exceed \$1.5 billion. However, if the directors are engaged "exclusively" in the management of a retail merchandising business, the directors would not fall within the definition of "management official" for purposes of the DIMIA (see the "Management Interlocks" booklet).

- **[For uninsured trust banks]** The limitations of the bank's activities must be fully enumerated in the Articles of Association. Specifically, the articles must state clearly that: 1) the business of the association will be limited to that of a national trust bank; and, 2) the bank must obtain the OCC's written determination of no objection before amending its Articles of Association to expand the scope of its activities and services.

[For CEBA credit card banks] The limitations of the bank's activities must be enumerated fully in the Articles of Association. Specifically, the articles must state that: 1) the business of the association will be limited to that of a national credit card bank as specified in the Competitive Equality Banking Act of 1987; and, 2) the bank must obtain the OCC's written determination of no objection before amending its Articles of Association to expand the scope of its activities and services.

- **[For non-CEBA credit card banks]** The limitations of the bank's activities must be enumerated fully in the Articles of Association. Specifically, the articles must state: 1) the business of the association will be limited to that of a credit card bank; and, 2) the bank must obtain the OCC's written determination of no objection before amending its Articles of Association to expand the scope of its activities and services.
- **[For bankers' banks]** The limitations of the bank's activities must be enumerated fully in the Articles of Association. Specifically, the articles must state that: 1) the business of the association will be limited to that of a national bankers' bank; and, 2) the bank must obtain the OCC's written determination of no objection before amending its Articles of Association to expand the scope of its activities and services.
- **[For bankers' bank waivers]** In your application, you requested waiver/exemption from the following statutes, laws, and regulations: (list the legal cite and title). The OCC performed a legal review and analysis of the material submitted with your waiver request. [Insert either a. or b. here.]

a. Based on that review, the following waivers are granted: (list the legal cite and title).

b. We are unable to grant a waiver/exemption as requested from (list the legal cite and title).

Additional requests for waivers consistent with your proposal may be submitted during the organization phase.

- **[For cash management banks]** The limitations of the bank's activities must be enumerated fully in the Articles of Association. Specifically, the articles must state that: 1) the business of the association will be limited to that of a cash management bank; and, 2) the bank must obtain the

OCC's written determination of no objection before amending its Articles of Association to expand the scope of its activities and services.

- **[For community development banks (if the bank is and/or will be seeking funding from national bank investors)]** The community development focus of bank's activities must be included in its Articles of Association. Specifically, the articles must state that the business of the association will be designed primarily to promote the public welfare consistent with the requirements for national bank investment in community development projects pursuant to national banking laws and regulations, including 12 USC 24 (Eleventh) and 12 CFR 24.
- **[For all banks with affiliates]** Any services performed by affiliates for the bank and payments to said affiliates by the bank will be rendered pursuant to contracts that comply with federal law and regulation, reflect safe and sound practices, and are at costs similar to those the bank would pay an independent third party for the same services. The contracts must be submitted to the (name) District Office (Attn: Licensing) for review prior to or at the time corporate existence is established.

Appendix B: Minimum Policies and Procedures

Some of these policies and procedures may not be applicable to special purpose banks. The board must adopt and monitor those policies and procedures applicable to the bank's activities.

1. Lending policy, including:
 - a. Fundamental elements of a sound loan policy as described in the "Loan Portfolio Management" booklet of the *Comptroller's Handbook for National Bank Examiners*.
 - b. Loan administration procedures designed to ensure that no extensions of credit are granted without first obtaining and analyzing current and satisfactory credit information as well as satisfactory and, in the case of secured loans, perfected collateral documentation.
 - c. Internal loan review procedures to review periodically the loan portfolio to identify and categorize problem credits.
 - d. Board approval of management's review of the adequacy of the bank's allowance for possible loan losses and maintenance of an adequate allowance consistent with the comments in the "Allowance for Loan and Lease Losses" booklet of the *Comptroller's Handbook for National Bank Examiners*.
 - e. Procedures to ensure that the bank:
 - Takes immediate and continuing action to protect its interest in any and all assets displaying any evidence of weakness.
 - Monitors concentrations of credit and safeguards against unsound concentrations of credit.
 - Prices its credits properly.
 - f. Procedures to ensure compliance with *all* applicable laws and regulations, including, for example, lending limits and loans to insiders.

2. Funds management, investment securities, and interest rate risk policies, including:
 - a. A funds management policy and strategies consistent with the comments in the “Funds Management” section 405 of the *Comptroller’s Handbook*.
 - b. Procedures to enable the board and management to monitor liquidity and interest rate risk.
 - c. Guidelines for the bank’s use of brokered and other volatile funds with a specific description of the nature, extent, and purpose of their use. The policy should comply with 12 CFR 337.6 - Brokered Deposits.
 - d. A investment securities policy consistent with the comments in the “Investment Securities” section 203 of the *Comptroller’s Handbook for National Bank Examiners*; OCC Bulletin 96-69: Investment Securities: 12 CFR 1 - Final Rule dated 12/11/96; and OCC Bulletin 98-20: Investment Securities - Policy Statement dated 4/27/98, within which the bank must operate when purchasing and selling investment securities. The policy should specifically define the bank’s investment strategies.
 - e. A borrowed funds policy consistent with the comments in the “Borrowed Funds” section 302 of the *Comptroller’s Handbook for National Bank Examiners*.
 - f. An interest rate risk policy and strategy consistent with comments in the “Interest Rate Risk” booklet of the *Comptroller’s Handbook for National Bank Examiners* and OCC Bulletin 96-36: Interest Rate Risk - Final Policy Statement dated 7/12/96.
3. Fiduciary policies and procedures for banks with trust powers and for trust companies, including:
 - a. Fiduciary policies and procedures that promote sound risk management and compliance with applicable law. These policies and procedures should be adopted by the board, or its designated committee. Applicable law includes, but is not limited to, 12 CFR 9 - Fiduciary Activities of National Banks and 12 CFR 12 - Recordkeeping and Confirmation Requirements for Securities Transactions. Separate policy statements and operating procedures for

individual fiduciary lines of business should be established, if appropriate.

- b. Policies that address the bank's fiduciary goals and objectives, ethical culture, risk tolerance standards, and risk management strategies, including:
 - Board of directors, committee, and senior management supervisory responsibilities.
 - Organizational structures and lines of authority.
 - Strategic and financial planning.
 - A code of ethics.
 - Internal control systems.
 - Information processing, security, and contingency planning.
 - Audit and compliance programs.
- c. Policies covering all significant fiduciary products and services. Provide guidelines, as appropriate, including:
 - Account administration, recordkeeping, and custody of assets.
 - Investment management processes.
 - Securities trading, including brokerage placement practices.
 - The use of material inside information with securities transactions.
 - Managing conflicts of interest and self-dealing.
 - The selection and use of legal counsel.
- d. Policy guidelines that address:

- Communicating policies and subsequent policy changes.
- Monitoring policy compliance and reporting exceptions.
- Policy review and approval by the board, or its designated committee, at least annually.

4. Capital policy, including:

- a. Specific plans to maintain capital at a level consistent with the requirements of 12 CFR 3. [For trust bank charters: Specific plans to maintain capital at an acceptable level, addressing the risks unique to this type of business, should be established.]
- b. Procedures to develop and maintain a three-year capital plan, with projections for growth and capital requirements based on a detailed analysis of the bank's assets, liabilities, earnings, fixed asset expansion, and dividends.
- c. A dividend policy consistent with the three-year capital plan and the bank's plans to maintain capital at or above the level required by 12 CFR 3 (or an otherwise adequate level as approved by the OCC).
- d. Procedures to develop annual profit plans that contain realistic and comprehensive budgets (with projected balance sheets and year-end income statements) and to describe the operating assumptions that form the basis of the projections.
- e. A process whereby the bank periodically reviews the policy to ensure it reflects any changes in laws, rules, or regulations pertaining to capital and dividends.

5. Internal and external audit policies, including:

- a. The development and implementation of an internal control system, including internal and external audit functions, that provides for effective risk assessment, timely and accurate reports, safeguarding and management of assets, and compliance with applicable laws and regulations. The audit functions and control systems should be consistent with the "Internal and

External Audit” and “Internal Control” booklets of the *Comptroller’s Handbook*.

For additional reference, see *The Directors Book: The Role of the National Bank Director*; OCC Bulletin 98-1: Interagency Policy Statement – Internal Audit/Outsourcing dated 1/7/98; and OCC Bulletin 99-37: Interagency Policy Statement on External Audit Programs dated 10/7/99.

- b. Procedures to ensure that the bank maintains minimum security devices and procedures as required by 12 CFR 21.
 - c. Internal control systems to ensure ongoing compliance with the currency reporting and recordkeeping requirements of the Bank Secrecy Act (BSA). Personnel should be trained in BSA procedures and one or more persons designated to monitor day-to-day compliance.
 - d. [If applicable] The development and implementation of a fiduciary audit program to ensure that the bank is complying with 12 CFR 9, applicable state and federal law, and sound fiduciary principles. Also required (12 CFR 9.9) are the appointment and establishment of a trust audit committee.
6. Insider policies, including:
- a. The development and implementation of a written policy according to the “Insiders Activities” booklet of the *Comptroller’s Handbook*.
 - b. [Applicable to trust banks] Written policies and procedures, as required by 12 CFR 9.5 to prohibit the use of material inside information in investment decisions or recommendations.
7. Compliance policies, including, if applicable:
- a. A compliance program covering consumer, fair lending, and community laws and regulations, approved by the board and management, that includes (see the *Comptroller’s Handbook – Consumer Compliance Examination*):
 - Delegation of compliance responsibilities to specific

bank personnel.

- Written guidance for, and training of, employees covering applicable laws and regulations.
 - A mechanism to report deficiencies and ensure corrective action.
- b. Branch closing policy (applicable to national banks with branches), including:
- Procedures for determining objectively which branch or branches to close and which customers to notify.
 - Procedures and methods for providing the notices required by 12 USC 1831r-1.
- c. A BSA program to fulfill the requirements of 12 CFR 21.21. The board of directors for each national bank must approve written procedures designed to monitor the bank's compliance with the requirements of the Bank Secrecy Act regulations, 31 CFR 103. The compliance program must provide for a system of internal controls to ensure ongoing compliance; provide independent testing for compliance; designate a person responsible for coordinating and monitoring day-to-day compliance; and provide training for appropriate personnel. The board of directors must approve the BSA compliance program.
- d. [If applicable] Development and implementation of policies and procedures for the administration of the rules governing securities transactions for broker-dealer activities. These include banking laws and regulations under 12 CFR 1, 12 CFR 10, 12 CFR 12, 15 USC 78o (Municipal Securities Rulemaking Board rules), and 17 CFR 400 (regulations under section 15C of the Securities Exchange Act of 1934 as amended by the Government Securities Act of 1986). In addition, the procedures should be consistent with the Securities Exchange Act of 1934 and the SEC's rules, specifically 17 CFR (commodity and securities). The procedures should address:
- Municipal and government securities dealer registration and professional qualifications.
 - Trading and underwriting.

- Sales and uniform practices.
 - Recordkeeping and retention.
 - Supervision.
- e. Development and implementation of procedures for the preparation, review for accuracy, and submission of required regulatory reports. The procedures should address:
- The requirements that the bank prepare all financial statements on an accrual basis according to generally accepted accounting principles.
 - Regular financial report filings (such as Quarterly Reports of Condition and Income, Annual Report of Trust Assets and Special Report of Trust Activities, as applicable, annual financial disclosures (12 CFR 18), and annual minimum security devices and procedures report).
 - Operations reports (such as bank robbery notification reports).
 - SEC reports (for covered banks).
 - Reports to shareholders.
 - Other reports as detailed in the *Comptroller's Handbook*.
8. Board supervision policy consistent with the "Duties and Responsibilities" section 501 of the *Comptroller's Handbook for National Bank Examiners* and *The Directors Book*, including:
- a. A method for periodically reviewing and revising, as necessary, the aforementioned policies.
 - b. Procedures to assess management's performance.
 - c. A method to assess whether board members are receiving adequate information on the bank's operation to enable them to fulfill their fiduciary responsibilities.

- d. A method to evaluate whether board members are acting responsibly and expeditiously in fulfilling their duties as directors.
- 9. Disaster recovery plan.
- 10. Policies and procedures for maintaining the privacy and security of consumer information, including:
 - a. Establishing privacy policies and opt out mechanisms (if appropriate) in accordance with 12 CFR 40. This includes:
 - Developing privacy notices.
 - Delivering initial and annual notices on timely basis.
 - Revising privacy notices as necessary.
 - Developing acceptable methods of delivery.
 - Implementing consumer opt out elections where applicable.
 - Limiting disclosure of account numbers for marketing purposes.
 - Limiting use and disclosure of information received from nonaffiliated financial institutions.
 - Developing confidentiality contract clauses where applicable.
 - b. Implementing training programs for employees about privacy policies and procedures.
 - c. Adopting internal controls, policies, and audit procedures to ensure continued compliance with privacy regulations.
 - d. Implementing a written information security program to safeguard customer information pursuant to the guidelines in 12 CFR 30. This includes:
 - Board approval and oversight of program.
 - Assessing risks to security of customer information.

- Designing information security program to control identified risks.
- Overseeing arrangements with service providers.
- Adjusting program in light of changes in technology, threats to information, sensitivity of customer information, changing business arrangements.

Appendix C: Stock Benefit Plans

Insider Compensation

Compensation for any national bank can include salaries, bonuses, fees, benefits, or other goods and services. For a proposed bank charter, the organizing group should include in its OCC charter and FDIC deposit insurance applications a description of all forms of insider compensation, including stock-based compensation plans. The OCC reviews the organizers' approved compensation plans to determine if they are reasonable. The OCC's conclusions about the acceptability of a proposed bank's insider compensation package have a bearing on the overall assessment of the proposed bank charter application.

Organizers should establish compensation plans that are in the best interest of the bank and commensurate with the services provided. A new bank may include a stock benefit or compensation plan (stock benefit plan), including stock options, stock warrants, and similar stock-based compensation, as part of its overall compensation for organizers, directors, and officers provided that it structures the plans appropriately.

Regulatory Review of Compensation Plans

The OCC evaluates each proposed bank's total compensation package, including its stock benefit plan, to determine if it is reasonable considering each person's contribution of time, expertise, and financial commitment. The OCC assesses the amount and basis of any cash or stock payments an organizer may receive as a return for funds placed at risk or for services rendered. In addition, the OCC considers the number and percentage of additional stock warrants or options that are proposed relative to the number of shares the bank will issue at the time it opens.

The OCC also reviews, for consistency with this insider compensation policy, the compensation package for each newly organized bank holding company (BHC). A newly organized BHC is defined as one that has been operational for less than three years. If not disclosed in the charter application, the OCC considers bank director and senior executive officer participation in a newly organized BHC's stock benefit plan a "significant change" subject to prior OCC review and written non-objection determination.

The organizers should provide documentation to support the reasonableness of its compensation package, including the methodology used to value any stock options (such as, stock option pricing model or discounted cash flow analyses and relevant comparable data). The OCC has no preference about

which method the organizing group uses for its valuation of stock options. The OCC also may consider changes to the new bank's overall compensation package after the application is filed a "significant change," which will require the OCC's prior non-objection before the bank can be allowed to open.

An established company² may have existing compensation plans in which the national bank's management and board may participate. The OCC will review such plans closely. Even if the existing plan would be inconsistent with the general criteria for new bank stock benefit plans, the OCC may allow bank management and board participation in limited circumstances. The OCC will consider whether such compensation, in combination with other forms of compensation, is reasonable.

The FDIC reviews compensation plans as part of its assessment of each deposit insurance application. The OCC and the FDIC apply similar standards to their separate evaluations of compensation plans. If the organizers would like the OCC to review proposals that may not conform to the guidelines in this policy, they should provide supporting information and justification to support a deviation from established policies.

In some circumstances, the exercise of rights granted by a stock benefit plan trigger filing to the OCC under the Change in Bank Control Act (CBCA) (12 USC 1817(j)) or the OCC's implementing regulation, 12 CFR 5.50. The OCC's review of stock benefit plans in connection with a charter application does not satisfy the prior notice requirements under the CBCA if the exercise of rights would trigger the prior notice requirements.

Unacceptable Forms of Compensation

The OCC considers as unacceptable any new bank compensation proposal that allow insiders to:

- Purchase or acquire a separate class of bank or BHC stock at a lower price than other subscribers or with greater voting rights.
- Purchase stock at an original issue price lower than that paid by other investors.
- Receive a cash payment based on the market value of the bank's stock.
- Remove cash from the bank's capital accounts.

²An established company is one that has been operating for more than three years and will become a BHC or a non-BHC parent of a national bank when the bank opens for business.

- Obtain more than one option or warrant for each share of stock subscribed for Type 1 and Type 2 plans at the time of the bank's opening (see "Primary Types of Insider Stock Benefit Plans" discussion).
- Receive stock options or warrants issued to a holder other than the name of the bank insider, such as, a partnership, corporate entity, spouse, or other family member.
- Exercise "cashless" stock options, such as stock appreciation rights or phantom shares.

These compensation arrangements raise concerns about the bank's ability to raise additional capital, allow control without a proportionate financial investment, and make it difficult for other shareholders to remove directors if they manage the bank in an unsafe or unsound manner.

Excessive Compensation

Each national bank should maintain safeguards to prevent the payment of compensation that is excessive or that could lead to material financial loss to the bank. Excessive compensation is an unsafe and unsound practice and is prohibited by regulatory safety and soundness standards. The commitment to pay, or payment of, unacceptable or excessive compensation also reflects negatively on the organizing group's charter proposal. Compensation is considered excessive when amounts paid are unreasonable or disproportionate to the services performed by any person for a national bank.

If excessive compensation is discovered before the bank opens, the OCC will disallow payment of that compensation from bank funds. The OCC may request additional information from the organizing group to support the compensation or may require the organizers to change or eliminate the form or amount of compensation before it will authorize the bank to open for business. If the OCC finds that compensation is excessive, the OCC may preclude the bank from opening.

After the bank opens, if the OCC determines that compensation is excessive, the board is responsible for taking corrective action and seeking restitution. Appendix A to 12 CFR 30 —Interagency Guidelines Establishing Standards for Safety and Soundness addresses excessive compensation and lists the factors the OCC considers in its evaluation of compensation packages.

Accounting Considerations and Shareholder Disclosures

Organizers and boards are responsible to assure that each component of a bank's compensation package is accounted for properly and that regulatory reports are accurate. In addition, they should refer to the Internal Revenue Code and/or Securities and Exchange Commission rules for guidance about shareholder approval and disclosure. In general, organizers must disclose

and describe fully insider compensation, including stock benefit plans, to all prospective stock subscribers in its registration statement or private placement document, regardless of whether shareholder approval is required for the plans.

Stock Benefit Plans

Bank organizers should structure any proposed stock benefit plan to encourage the participants' continued involvement in the bank. The plan also should serve as an incentive for the successful, long-term operation of the bank.

Stock benefit plans should contain no feature that would:

- Encourage speculative or high-risk activities.
- Serve as an obstacle or otherwise impede the sale of additional stock to the general public.
- Be structured to convey control of a national bank or otherwise provide preferential treatment to the bank's insiders.

Primary Types of Insider Stock Benefit Plans

In general, there are two primary types of stock benefit plans:

- Type 1 plans grant options/warrants to directors and active senior executive officers to reward future performance.
- Type 2 plans grant options/warrants to organizers as compensation for:
 - ◆ Financial risk borne to fund the formation and/or organization of a bank ("seed money");
 - ◆ Non-cash contribution of assets (such as, land for a banking facility) (see the "Capital and Dividends" booklet of the Manual);
 - ◆ The guarantee of a loan to finance a bank's organization; or
 - ◆ Professional services (such as, legal, accounting, or underwriting services) rendered to facilitate the establishment of the bank.

Type 1 Plans

Banks typically use Type 1 plans to reward senior executive officers and directors for future performance. Accordingly, their continuing involvement

to support successful operations of the bank after it opens is required for participation in Type 1 plans. The plan need not grant stock options to all senior executive officers or directors of the new bank, but the organizing group should provide support for the number of options made available to each plan participant.

In some new banks, CEOs and other key officers may receive stock options at opening similar to “signing bonuses,” which are intended to compensate them for financial risks they assume in joining a new bank’s management team. Financial risks to senior executive officers can be twofold. First, they often leave positions in established institutions that they may have held for extended periods. Second, these officers may find themselves subsequently unemployed for an extended period of time or need to take a lesser position in another institution if the new positions do not work out and they leave after a relatively short tenure. The OCC requires the terms of these stock option plans to conform to OCC policy guidelines. In addition, the OCC considers this form of compensation in its evaluation of overall compensation.

Type 2 Plans

Organizers may participate in Type 2 plans. Type 2 plans provide vehicles for organizing groups to reimburse organizers for financial risk borne during the organization phase, such as providing seed money, contributing organization funds or non-cash assets, or guaranteeing a loan. An organizer could elect to receive as compensation either cash or stock or any combination of the two.

The number of shares received is determined by dividing the amount to be reimbursed by the value of each share. Organizers may not receive stock options for additional stock subscribed that would exceed the amount for which they are being reimbursed. If stock options or warrants are received in exchange for an organizer’s guarantee of a loan, each person’s options or warrants should not exceed his or her pro rata amount of the loan guarantee or the amount drawn, if less than the guaranteed amount of the loan.

Professional services normally are paid for in cash. Professional service providers, however, may participate in Type 2 plans if the service provider lowers the cash payment for the service rendered to the organization as a result of plan participation.

If an organizer, who is also a service provider, is fully reimbursed in cash for all professional services, he or she can participate in a Type 2 plan only if stock compensation is elected for reimbursement of seed money, organization funds, contributions of non-cash assets, or loan guarantee.

Type 1 and Type 2 Plan Requirements

Type 1 and 2 stock benefit plans must include:

- A limited duration of rights (maximum of 10 years).
- An exercise, or strike, price of stock rights, which shall be no less than the fair market value of the stock at the time that the rights are granted.
- A clause that allows the OCC to direct the national bank to require plan participants to “exercise or forfeit” their stock rights if:
 - ◆ Capital falls below regulatory minimums as set forth in 12 CFR 3, or a higher requirement as the OCC may determine; or
 - ◆ The existence of outstanding warrants impairs the bank’s ability to raise capital.

Additional Type 1 Requirements

Type 1 stock benefit plans also must include the following requirements:

- A maximum of one option or warrant for each share subscribed (in other words, a “one for one” stock option or warrant plan).
- Vesting requirements that encourage the participant to remain involved in the bank’s operations (for example, vesting approximately equal percentages each year over the initial three years of operations).
- Restrictions on the transferability of the options/warrants, except transfer to a holder’s estate in the event of death or permanent disability.
- Rights upon termination of relationship with the bank.

Acceleration and Vesting of Unearned Options or Warrants

The OCC permits acceleration and vesting of earned and unearned options or warrants if:

- The stock benefit plan required a three-year minimum vesting period, and
- The three-year period has elapsed.

If one of the following circumstances exist, the OCC permits immediate acceleration and vesting without regard to the previous criteria:

- A senior executive officer, including the CEO, ceases to work for the bank after a change in ownership occurs.
- A director loses his or her position on the board after a change in ownership occurs.
- A senior executive officer or director becomes permanently disabled or dies.

The OCC requires a senior executive officer or director to forfeit unvested options/warrants under all other circumstances.

Rights of Termination

A senior executive officer or director who ceases to be an active participant in the bank's operations must exercise or forfeit options/warrants within 90 days after separation from or termination by the bank. In the event of permanent disability or death, the stock option holder or the person's estate should exercise options/warrants within 12 months or else forfeit the options.

Additional Type 2 Requirements

Unlike Type 1 plans, Type 2 stock benefit plans do not require vesting, transferability restrictions, or continued association with the national bank. Type 2 stock compensation plans, however, must meet the following additional plan requirements:

- A maximum of one option or warrant per share subscribed for the contribution of organization funds, non-cash assets, or guaranty of a loan for the new bank.
- A maximum of one option or warrant per share subscribed for the payment of professional services.

Management and Employee Stock Benefit Plans

In addition to Type 1 and Type 2 plans, the bank's board of directors may authorize a prospective management stock benefit plan (also called a stock incentive plan) for its senior executive officers and/or an employee stock option plan for its employees. In this context, the definition of senior executive officer is not confined to that included in Regulation O. Any insider who participates in a management stock incentive plan also would be considered a senior executive officer. Directors may participate in the plan as a method of payment for their services to the bank. In many cases, participation may be tied to specific individual or bank performance criteria.

Management and employee stock benefit plans should encourage the continued involvement of the participants and serve as an incentive for the successful, long-term operation of the bank. In addition, such plans should:

- Be viewed as part of an individual's total compensation.
- Be reasonable relative to the service provided.
- Include compliance with appropriate other laws, including applicable state and tax laws.

The bank should conform the terms of these plans to the requirements of Type 1 plans. Like other stock benefit plans, management and employee stock benefit plans should not encourage speculative or high-risk activities or serve as an obstacle to, or otherwise impede, the sale of additional stock to the general public.

Questions

Organizers should direct questions about this policy to the licensing manager in the appropriate district office.

Glossary

An **affiliated bank** is one that meets the definition found in 12 USC 221a.

An entity controlling 25 percent or more of a bank must register as a **bank holding company** (BHC), if the controlled bank is covered by the definition of a bank found in the Bank Holding Company Act (BHCA) (12 USC 1841(c)). Certain limited purpose banks (for example, credit card banks and trust banks) are not defined as banks under the BHCA.

A **bankers' bank** is a national bank owned exclusively, except for directors' qualifying shares, by other depository institutions or depository institution holding companies. Bankers' bank activities are limited to providing:

- Services to or for other depository institutions, their holding companies, and/or the officers, directors, and employees of such institutions.
- Correspondent banking services at the request of other depository institutions or their holding companies.

A **central city**, as defined in 12 CFR 5.3(e), means the city or cities identified in the complete title of the Metropolitan Statistical Area (MSA) in which the relocating office is located.³

The **contact person or spokesperson** is an organizer and proposed director of a proposed bank. In certain circumstances (excluding independent charters), the contact person instead may be a representative of (1) a holding company sponsor, (2) people currently affiliated with other depository institutions, or (3) people who, in the OCC's view, otherwise are collectively experienced in banking and have demonstrated the ability to work together effectively.

Control has the same meaning as used in the BHCA (12 USC 1841(a)(2)).

An **eligible bank** is a national bank that:

- Has a composite CAMELS rating of 1 or 2.

³The Office of Management and Budget's (OMB) lists of MSAs and Central Cities can be found on the Internet at <http://www.census.gov>. At the "Subjects A-Z" menu, click on "M," then on Metropolitan Areas, then on Metropolitan Area Definitions, then on Central Cities of Metropolitan Areas. Copies of the OMB list may also be obtained by requesting the most recent "List of Metropolitan Area Definitions" (accession no. PB96-180575) from National Technical Information Services (NTIS), Document Sales, 5205 Port Royal Road, Springfield, VA 22161, (703) 487-4650.

- Has a satisfactory or better Community Reinvestment Act (CRA) rating. (This factor does not apply to an uninsured bank or branch or a special purpose bank covered by 12 CFR 25.11(c)(3).)
- Is well capitalized as defined in 12 CFR 6.4(b)(1).
- Is not subject to a cease and desist order, consent order, formal written agreement, or prompt corrective action directive; or, if subject to any such order, agreement or directive, is informed in writing by the OCC that the bank still may be treated as an “eligible bank.”

An **eligible depository institution** means a state bank or a federal or state savings association that is FDIC-insured and that meets the eligible bank criteria.

Executive officer positions normally include the chairman of the board, the president, every vice president, the cashier, the secretary, and the treasurer, consistent with the definition in 12 CFR 215.2(e)(1).

An **existing BHC** is defined as one that has received Federal Reserve Board (FRB) approval to become a BHC and has been in operation for at least three years prior to filing its application to organize a new bank.

An organizing group is considered **experienced in banking** if a majority of its members have three or more years of recent (not to exceed six months), significant involvement in policy making as directors or executive officers in the same or affiliated federally insured institutions that the OCC finds have performed satisfactorily.

Final approval means the OCC action of issuing a charter certificate and authorizing a national bank to open for business.

Holding company means any company that controls or proposes to control a national bank regardless of whether it is a BHC under 12 USC 1841(a)(1).

An **insider** is a proposed organizer, director, principal shareholder, or executive officer of the proposed national bank.

An **insider contract** is any financial or other business, voting, or ownership agreement, arrangement, or transaction, direct or indirect, oral or written, between any insider and the proposed bank.

Lead depository institution means the largest depository institution controlled by a BHC, based on a comparison of the total assets controlled by each depository institution as reported in its Consolidated Report of Condition and Income (call report) required to be filed for the immediately preceding four calendar quarters.

A **low- or moderate-income area**, as provided in 12 USC 1831r-1, means a census tract for which the median family income is: (1) less than 80 percent of the median family income for the MSA in which the census tract is located; or, (2) in the case of a census tract that is not located in an MSA, less than 80 percent of the median family income for the state in which the census tract is located, as determined without considering family income in MSAs in such state.

A **national bank** means an insured or uninsured national banking association and any bank or trust company located in the District of Columbia operating under the OCC's supervision.

Organizers are the persons who filed and signed the charter application. An organizing director may be added during the organization phase, if his/her Interagency Biographical and Financial Reports is filed with the OCC and receives no objection. This director also becomes an "organizer."

Organizing group means five or more persons acting on their own behalf, or serving as representatives of a sponsoring holding company, who apply to the OCC for a national bank charter.

A **principal shareholder** is a person, other than an insured bank, that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the proposed bank consistent with the definition in 12 CFR 215.2(m).

Preliminary approval means a decision by the OCC permitting an organizing group to proceed with the organization of a proposed national bank. A preliminary approval generally is subject to certain requirements that an applicant must satisfy before the OCC will grant final approval. As used in this booklet, the term "preliminary approval" includes an application granted preliminary conditional approval (that is, approval subject to special conditions in addition to standard requirements).

A new bank is a **subsidiary of a holding company** if 25 percent or more of its voting stock will be owned or controlled by a holding company or if the FRB (or the OCC, as appropriate) determines that a holding company otherwise has the power to elect a majority of the directors or to control the bank in any other manner.

References

Affiliates, Transactions with

Laws	12 USC 371c, 371c-1
Regulation	12 CFR 31

Articles of Association

Laws	12 USC 21, 21a
<i>Indemnification</i>	
Regulation	12 CFR 7.2014
<i>Lost Stock Certificates</i>	
Regulation	12 CFR 7.2018
<i>Preemptive Rights</i>	
Regulation	12 CFR 7.2021
<i>Quorum</i>	
Regulation	12 CFR 7.2009
<i>Shareholder Meetings</i>	
Laws	12 USC 71, 75
<i>Vacancies in Board</i>	
Law	12 USC 74
Regulation	12 CFR 7.2007

Authorization to Commence Banking Business

Laws	12 USC 26, 27
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Background Investigations

Regulations	28 CFR 16.34, 50.12
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Bank Premises, Investment in

Law	12 USC 371d
Regulation	12 CFR 5.37

Bank Protection Act

Laws	12 USC 1882, 1884
Regulation	12 CFR 21

Bank Secrecy Act

Regulation	31 CFR 103
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Bank Stock Loans

Law	12 USC 83
Regulation	12 CFR 7.2019

Bankers' Bank

Law	12 USC 27(b)
Regulation	12 CFR 5.20

Branches	
Law	12 USC 36
Regulation	12 CFR 5.30
Capital Requirements	
Laws	12 USC 51, 51c
Regulation	12 CFR 3
Capital Stock	
Laws	12 USC 51c, 52
Regulations	12 CFR 7.2016, 7.2017, 7.2018
Capital Stock Required to Commence Business	
Law	12 USC 53
Capital Structure Change	
Laws	12 USC 56, 57, 59
Regulations	12 CFR 5.46, 7.2020
CEBA Credit Card Bank	
Law	12 USC 1841(c)(2)(F)
Regulation	12 CFR 5.20
Certificate	
Law	12 USC 27
<i>Filing and Preservation</i>	
Law	12 USC 23
Change in Directors and Senior Executive Officers	
Law	12 USC 1831i
Regulation	12 CFR 5.51
Civil Money Penalties	
Laws	12 USC 504, 1818(l); 18 USC 1001, 1007
Issuance	PPM-5000-7 (Rev.)
Community Development Financial Institutions	
Law	12 USC 4701, et. seq.
Community Development Investments	
Law	12 USC 24(11)
Regulation	12 CFR 24
Community Reinvestment Act	
Law	12 USC 2901 et. seq.
Regulation	12 CFR 25

Convicted Individuals

Law 12 USC 1829

Corporate Powers and Investment Securities

Law 12 USC 24

Regulation 12 CFR 1

Covered Transactions

Laws 12 USC 371c, 371c-1

Depository Institutions Management Interlocks Act

Laws 12 USC 3201-3208

Regulation 12 CFR 26

Directors

Citizenship Requirement

Law 12 USC 72

Convicted of a Crime

Law 12 USC 1829

Delegation of Duties

Regulation 12 CFR 7.2010

Election

Law 12 USC 71

Regulations 12 CFR 7.2003, 7.2006

Engaged in Underwriting

Law 12 USC 78

Extensions of Credit

Law 12 USC 375b

Regulations 12 CFR 31, 215

Honorary

Regulation 12 CFR 7.2004

Indemnification of

Regulation 12 CFR 7.2014

Liability

Laws 12 USC 93, 503

Number of

Law 12 USC 71a

Oath of

Law 12 USC 73

Regulation 12 CFR 7.2008

Payment of Interest to

Law 12 USC 376

President, as

Law 12 USC 76

Regulation 12 CFR 7.2012

Proxy, as

Regulation 12 CFR 7.2002

Purchases from and Sales by

Law	12 USC 375
<i>Qualifications of</i>	
Law	12 USC 72
Regulation	12 CFR 7.2005
<i>Quorum</i>	
Regulation	12 CFR 7.2009
<i>Residency</i>	
Law	12 USC 72
<i>Vacancy in</i>	
Law	12 USC 74
Regulation	12 CFR 7.2007
Employee Retirement Income Security Act (ERISA) of 1974	
Law	29 USC 1001
Examination of National Banks	
Law	12 USC 481
Executive Officers	
<i>Cashier</i>	
Regulation	12 CFR 7.2015
<i>Extensions of Credit to</i>	
Laws	12 USC 375a, 375b
Regulations	12 CFR 31, 215
<i>Liability</i>	
Laws	12 USC 93, 504
<i>Loans to</i>	
Laws	12 USC 375a, 375b
Regulations	12 CFR 31, 215
<i>Payment of Interest to</i>	
Law	12 USC 376
FDIC Insurance	
Laws	12 USC 1815, 1816
Regulation	12 CFR 327
Federal Reserve Membership	
Laws	12 USC 222, 282, 501a
Regulation	12 CFR 209
Fidelity Insurance	
Regulation	12 CFR 7.2013
Filing Fees	
Regulation	12 CFR 5.5
Fraudulent Statements	
Law	18 USC 1001

Holidays	
Law	12 USC 95
Regulation	12 CFR 7.3000
Indemnification of Directors, Officers, and Employees	
Regulation	12 CFR 7.2014
Independent External Audit	
Laws	12 USC 1831m, 15 USC 78m
Regulations	12 CFR 11, 363 and 17 CFR 210
Insider Activities	
Laws	12 USC 375, 375a, 375b, 376
Regulations	12 CFR 31, 215
Publication	<i>Comptroller's Handbook, "Insider Activities"</i>
Interbank Deposits as Compensating Balances	
Law	12 USC 1972
Interlocking Directors and Officers	
Laws	12 USC 3201, et. seq., 15 USC 19
Lending Limits	
Law	12 USC 84
Regulation	12 CFR 32
Location, Change of	
Law	12 USC 30
Regulation	12 CFR 5.40
Name	
Laws	12 USC 22, 30, 35
Regulation	12 CFR 5.42
National Environmental Policy Act	
Laws	42 USC 4321-4347
Regulation	40 CFR 1500
National Historic Preservation Act	
Laws	16 USC 470-470x-6
Regulation	36 CFR 800
Organization Certificate	
Laws	12 USC 22, 23
Organization Costs	

Regulation	12 CFR 5.20
Organization of National Bank	
Law	12 USC 21
Regulation	12 CFR 5.20
Place of Business	
Laws	12 USC 22, 81
Participation in Lotteries	
Law	12 USC 25a
Publication of Application	
Regulation	12 CFR 5.8
Recordkeeping and Confirmation Requirements for Securities Transactions	
Regulation	12 CFR 12
Sale of Insurance	
Law	12 USC 92
Securities Firm Affiliation	
Laws	12 USC 78, 377
Securities Offering Disclosure Rules	
Regulation	12 CFR 16
Security Devices and Procedures	
Laws	12 USC 1882, 1884
Regulation	12 CFR 21
Theft, Embezzlement, or Misapplication	
Law	18 USC 656
Regulation	12 CFR 21
Title	
Laws	12 USC 22, 30, 35
Regulation	12 CFR 5.42
Trust Bank or Company	
Laws	12 USC 27, 92a, 1841(c)(2)(D)
Regulations	12 CFR 5.26, 9
Voting Trusts	
Regulation	12 CFR 7.2022